

THOMAS THACHER.

MAY 7, 1884.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. O. RAY, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 2483.]

The Committee on Claims, to whom was referred the bill (H. R. 2483) for the relief of Thomas Thacher, having considered the same, respectfully present the following report:

The history of this case is as follows:

This bill authorizes the Secretary of the Treasury to have canceled and discharged of record a judgment of forfeiture entered in the United States district court for the southern district of New York, October 20, 1877, against one hundred and two barrels of distilled spirits, seized at No. 72 Cortlandt street, New York; a judgment entered in said court January 17, 1882, against eighteen packages of spirits, seized at No. 175 Duane street; also a judgment entered in said court January 17, 1882, against ten barrels of distilled spirits, seized at No. 12 Beaver street; and also a judgment entered in said court, January 17, 1882, against thirty-six barrels of distilled spirits, seized, twelve at No. 51 Beaver street, ten at No. 62 New street, and fourteen at No. 50 Broadway, and to discharge also the stipulations filed in connection with said judgments, signed by Thomas Thacher, upon the payment by him of all costs, taxed or taxable, in favor of the United States in said actions.

These spirits, one hundred and sixty-six barrels in all, were seized in May, 1875. They were shipped from Saint Louis to Thomas Thacher, a commission merchant in New York, who advanced to the shippers nearly the amount of their value, and made subsequent payments for expenses, &c., beyond the value of the same. The property was bonded at a valuation of \$6,714.85. At the time of the seizure, the one hundred and two barrels were in Thacher's possession, the remainder were in possession of different parties, to whom he had made sales, and to whom, after the seizure, he had to make good the amount of the purchase money.

The principal portion, if not all, of these goods were consigned to Thacher by one Bensberg, a rectifier, of Saint Louis, who was reported to be "one of the most daring and unprincipled operators in crooked spirits" in that city.

The evidence in the case of the one hundred and two barrel lot showed that the spirits were marked and stamped in the manner required by the internal-revenue laws to indicate that the tax had been paid, but the rectifier had, in order to procure stamps for rectified spir-

its, made a false return on Form 122 to the collector, that he had emptied these spirits for rectification.

It was a common practice in connection with the whisky frauds in the West, for the rectifier to procure rectifiers' stamps in this manner, for the purpose of stamping illicit spirits. Judge Blatchford held that the false Form 122 forfeited the spirits under section 3451, Revised Statutes.

An application was made to the Secretary of the Treasury for remission of the forfeiture of this one hundred and two barrel lot. The judge, in the statement there of facts accompanying the petition, said that there was no evidence that the claimant had knowledge of said fraudulent document.

The application for remission was rejected by the Secretary of the Treasury, and a warrant of non-remission was issued October 5, 1877.

The judgment in the district court, in the case of the one hundred and two barrel lot, was affirmed by the circuit court and afterwards by the United States Supreme Court (13 Otto, 679).

The one hundred and two barrel case was made a test case, and after the failure to obtain remission in that case, and the decision of the Supreme Court, judgment was taken in the other cases under the same state of facts.

The amount of judgments recovered in all the cases was as follows:

In the one hundred and two barrel case, \$3,890.56 and \$250 as costs; in the 10 barrel case, \$483.37 and \$250 as costs; in the 18 barrel case, \$884.73 and \$250 as costs; in the 36 barrel case, \$1,456.19 and \$250 as costs; total, \$6,714.85.

It was decided by the Supreme Court, in the case of Henderson's distilled spirits (14 Wall., 44), that the fact that the claimant was an innocent purchaser without notice of the wrongful acts of the antecedent owner, constituted no defense to the claim for forfeiture. Henderson was an innocent and *bona fide* purchaser of spirits in a bonded warehouse, which he removed and paid tax upon without knowledge of any fraud. Congress afterwards afforded him relief (act of February 17, 1879). That case differed from the present one in some respects, and your committee do not consider that act as constituting a precedent which should necessarily be followed in this instance.

The question in the present case is, whether the claimant Thacher is entitled, as a matter of equity, to be relieved from these judgments.

George Bliss, esq., the then United States attorney, in a letter dated August 14, 1876, on file in the office of the Secretary of the Treasury with the claim for remission, reported that he was satisfied that there was no knowledge or complicity on the part of Thacher concerning Bensberg's "crooked" business.

M. B. Blake, collector internal revenue, second New York district, reported that he had known Mr. Thacher as doing business with his office for a long series of years, and had considered him a particularly conscientious man, and did not think it possible that he could have had knowledge of any fraud at the West in connection with these spirits.

Your committee consider this case a hard one. Mr. Thacher has been put to a good deal of expense; and to pay these judgments would be a severe penalty upon a man himself innocent of any violation of law.

The Commissioner of Internal Revenue did not feel inclined to recommend a compromise of the judgment while the case was pending in the Supreme Court, a construction of the statute under which the seizure was made being deemed of importance.

But considering the severity of the statute under which the forfeiture

was made and the fact that Mr. Thacher, in purchasing the spirits in question, observed the ordinary care of the trade and was innocent of fraud in the matter, the Commissioner is now of the opinion that the interests of the Government will not suffer by relieving him from the payment of these judgments, and recommends that the relief be granted.

The acting Secretary of the Treasury, in a communication dated February 14, 1883, addressed to one of your committee, recommends the relief of Mr. Thacher.

In view of the facts of the case and the approval of the proper officers of the Treasury, your committee report the bill back to the House with the recommendation that it do pass.

